

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IVAN MATTHEWS,

1:05-cv-00016-OWW-SMS-P

Plaintiff,

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS** (Doc. 21)

vs.

E.S. ALAMEIDA, JR., et al.,

**ORDER DISMISSING ACTION FOR
FAILURE TO OBEY THE COURT'S
ORDER AND FAILURE TO STATE A
CLAIM**

Defendants.

_____/

Plaintiff Ivan Matthews ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On February 17, 2006, the Magistrate Judge filed a Findings and Recommendations herein which was served on plaintiff and which contained notice to plaintiff that any objections to the Findings and Recommendations were to be filed within twenty (20) days. On March 3, 2006, plaintiff filed objections to the

1 Magistrate Judge's Findings and Recommendations.

2 In accordance with the provisions of 28 U.S.C. §
3 636(b) (1) (C) and Local Rule 73-305, this Court has conducted a de
4 novo review of this case. Having carefully reviewed the entire
5 file, the Court finds the Findings and Recommendations to be
6 supported by the record and by proper analysis.

7 The Court has reviewed plaintiff's objection and finds that
8 it does not set forth good cause for plaintiff's failure to obey
9 the Court's order. Plaintiff asserts that he could not obey the
10 Court's order because he has been "constantly litigating" his
11 criminal appeal in a different court. (Obj., 1:26-28.)

12 Plaintiff's litigation demands in other actions do not provide a
13 basis upon which to excuse plaintiff's failure to respond to the
14 Court's orders in this case. At the very least, Plaintiff could
15 have sought an extension of time to comply with the order.
16 Silence in the face of a court order is not acceptable.

17 In this case, this is the third time the Magistrate Judge
18 issued a Findings and Recommendations recommending dismissal for
19 failure to obey a court order. (Docs. 4, 8, 21.) The previous
20 two times, the Magistrate Judge vacated the Findings and
21 Recommendations after plaintiff filed objections. (Docs. 6, 13.)
22 Plaintiff is aware of what will occur when he fails to obey the
23 Court's orders. The Court has twice exercised leniency, yet
24 plaintiff again failed to comply with the Court's order and then
25 tendered a frivolous excuse for his failure to comply. It is
26 notable that while plaintiff was apparently unable to file any
27 response at all to the Court's order, he was able to file an
28 objection once the Findings and Recommendations was issued.

1 There is no good cause to set aside the Findings and
2 Recommendations and allow plaintiff another opportunity to comply
3 with the Court's order. The Court will dismiss this action
4 without prejudice rather than with prejudice. However, this
5 dismissal counts as a strike under 28 U.S.C. § 1915(g).

6 With respect to plaintiff's proposed amended complaint
7 lodged with the Clerk's Office on March 13, 2006, the filing is
8 not signed. Even if the Court had been inclined to set aside the
9 Findings and Recommendations and review the amended complaint,
10 unsigned filings are unacceptable. In light of this order, the
11 Clerk's Office shall return the lodged complaint to plaintiff.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The Findings and Recommendations, filed February 17,
14 2006, is ADOPTED IN FULL;
- 15 2. The Clerk's Office shall return to plaintiff his
16 unsigned, lodged amended complaint; and
- 17 3. This action is DISMISSED, without prejudice, for
18 plaintiff's failure to obey the court's order of
19 January 6, 2006, and for failure to state a claim upon
20 which relief may be granted.

21
22 IT IS SO ORDERED.

23 **Dated: March 28, 2006**
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/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE